

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

BKY 04-44830

Dennis & Julie Hanson,

Debtor(s).

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**NOTICE OF HEARING AND OBJECTION TO  
CONFIRMATION OF CHAPTER 13 PLAN**

Michael Farrell, Chapter 13 trustee, by and through his undersigned attorney, hereby objects to confirmation of the Chapter 13 plan filed by Debtor.

1. The Court will hold a hearing on this motion at 10:00 a.m. on November 18, 2004, in Courtroom 8 West, United States Courthouse, 300 South 4<sup>th</sup> Street, Minneapolis, Minnesota.

2. Any response to this motion must be filed and delivered not later than 10:00 a.m. on November 19, 2004, which is 24 hours (1 business day) before the time set for the hearing, or filed and served by mail not later than November 17, 2004, which is three business days prior to the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

3. Michael Farrell is the Chapter 13 trustee ("Trustee") of the Debtor in the above-referenced bankruptcy case. This case is pending before this Court.

4. This Court has jurisdiction over this matter under 28 U.S.C. Section 157 and 1334. This objection is brought pursuant to 11 U.S.C. §1324 and 1325, Bankruptcy Rule 3015 and Local Rule 3015. This matter is a core proceeding.

5. Debtors commenced this case by filing a voluntary Chapter 13 petition on September 9, 2004. Debtors filed a Chapter 13 plan on that date. The plan provides for monthly payments of \$500 for a period of 36 months resulting in a dividend to unsecured creditors of \$8,688 or 7 percent.

6. Debtors listed on their schedules two vehicles, three snowmobiles and a trailer that they valued as a group at \$26,000 and indicated that the items were subject to a lien of the same amount to Coop Credit Union of Montevideo. Debtors testified at the Meeting of Creditors that the assets were actually worth \$31,000. Debtors did not claim the equity in the property as exempt. Debtors also testified that they owned a timeshare that was worth \$10,000 that was not listed on the schedules and was not claimed exempt. The equity in these assets exceeds the amount being distributed to unsecured creditors and therefore the plan does not meet the best interests of creditors test.

7. Debtors listed in their schedules a 1993 Saturn and a 1994 Jeep which they give a combined value of \$1,500. The schedules indicate that the assets are “owned by sons” but it is not clear whether one or both are owned by the sons and why these assets are listed on Debtors’ schedules. The plan proposes to pay United Minnesota Bank \$1,500 towards a claim secured by these assets. Debtors testified that the Saturn is owned by the sons and the Jeep is free and clear. Trustee objects to Debtors treating this claim as secured under these circumstances.

8. Debtors testified at the Meeting of Creditors that they own a second timeshare that is subject to a security interest or lien. They indicate that they intend to surrender this asset. There is no such asset or secured debt listed in the schedules. There is no provision in the plan indicating that they are surrendering the asset.

9. Debtors testified at the Meeting of Creditors that they own a motorhome that is subject to a security interest or lien. They indicate that they intend to surrender this asset. There is no such asset or secured debt listed in the schedules. There is no provision in the plan indicating that they are surrendering the asset.

**WHEREFORE**, Michael Farrell requests an order as follows:

- (A) Denying confirmation of the Chapter 13 plan; and
- (B) Granting any other relief the Court deems just and proper.

Hedback, Arendt & Carlson, PLLC

Dated: November 3, 2004

\_\_\_\_/e/ John A. Hedback\_\_\_\_  
John A. Hedback, #142438  
Attorney for Chapter 13 Trustee  
2855 Anthony Lane South, Suite 201  
St. Anthony, MN 55418  
(612) 436-3280  
Attorneys for the Movant

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

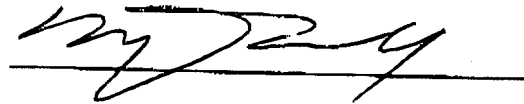
Dennis & Julie Hanson,

BKY 04-44830

VERIFICATION

The Trustee verifies under penalty of perjury that the information contained in the foregoing motion is true and correct to the best of the Trustee's knowledge, information and belief.

Dated 11-3-04

A handwritten signature in dark ink, appearing to be "M. J. Hanson", written over a horizontal line.

UNITED STATES BANKRUPTCY COURT  
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**MEMORANDUM**

Debtor(s).

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Michael Farrell, Chapter 13 trustee, (Trustee) hereby submit its memorandum of fact and law in support of its Objection to Confirmation (Motion).

**I. STATEMENT OF FACTS**

The facts supporting the Objection to Confirmation are set forth in the attached verified motion. In addition, Trustee also relies on the representations made by Debtor in their verified Schedules on file and of record herein.

**II. STATEMENT OF LAW AND ARGUMENT**

Section 1324 provides that a party in interest may object to confirmation of a plan. A Chapter 13 trustee would be such a party in interest.

Section 1325 provides that the Court shall confirm a plan if it meets certain requirements.

Section 1325(a)(3) requires that the plan be proposed in good faith. Good faith is based upon the totality of the circumstances. *In re Molitor* 76 F.3<sup>rd</sup> 218, 220-221 (8<sup>th</sup> Cir. 1996) (citing *In re LeMaire*, 898 F.2d 1346, 1349 (8<sup>th</sup> Cir. 1990)).

Section 1325(a)(4) requires that the value that the unsecured creditors received shall be not less than unsecured creditors would receive in a Chapter 7. This is a “best interests of creditors” test. Trustee contends that this test is determined by comparing the amount unsecured creditors are to receive as of the effective date of the plan to the value of the equity of Debtor’s interests in property that is not exempt.

Hedback, Arendt & Carlson, PLLC

Dated: November 3, 2004

\_\_\_\_\_/e/ John A. Hedback\_\_\_\_\_  
John A. Hedback, #142438  
2855 Anthony Lane South, Suite 201  
St. Anthony, MN 55418  
(612) 436-3280

Attorneys for Movant

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**UNSWORN DECLARATION FOR  
PROOF OF SERVICE**

Debtor(s).  
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The undersigned, being an employee of Hedback, Arendt & Carlson, PLLC, attorneys licensed to practice law in this Court, with office address of 2855 Anthony Lane, St. Anthony, MN 55418, declares that on the date below, I served the following:

1. Notice and Objection to Confirmation of Chapter 13 Plan;
2. Memorandum;
3. Proposed Order; and
4. Unsworn Declaration for Proof of Service.

upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at St. Anthony, MN addressed to each of them as follows:

Office of United States Trustee  
1015 US Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415

DENNIS & JULIE HANSON  
PO BOX 503  
NEW LONDON, MN 56273

ROBERT L KALENDA  
KALENDA & ASSOCIATES  
919 W ST GERMAIN ST STE 2000  
ST CLOUD, MN 56301

and I certify under penalty of perjury, that the foregoing is true and correct.

Dated: November 3, 2004

\_\_\_\_/e/ John A. Hedback\_\_\_\_

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In re:

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Dennis & Julie Hanson,

**ORDER DENYING  
CONFIRMATION OF  
CHAPTER 13 PLAN**

Debtor(s).  
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This case came before the Court on the confirmation of Debtor's Chapter 13 plan. An objection to confirmation has been filed by Michael Farrell, Chapter 13 trustee. Appearances were noted on the record. Based on the file, record and proceedings herein,

**IT IS HEREBY ORDERED:** Confirmation of Debtor's Chapter 13 plan is hereby denied.

BY THE COURT

Dated:\_\_\_\_\_

\_\_\_\_\_  
U.S. Bankruptcy Judge